IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 990 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
PATEL JAGABHAI ISHWARBHAI & 7 - Opponent(s)

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Appearance :
Mr.K.C.Shah,learned APP for Appellant(s) : 1,
None for Opponent(s) : 1,
Mr.Y.M.Thakore for MR PRAKASH K JANI for Opponent(s) : 2 - 8.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 07/09/2007

ORAL JUDGMENT (Per: HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. The appeal is admitted. Mr.Y.M.Thakore on behalf of Mr.P.K.Jani, learned counsel, waives service of notice of admission on behalf of respondents No.2 to 8. At the request of the learned counsel for the parties and in the facts and circumstances of the case, the appeal is being heard and finally decided today.

2. By filing the above referred to criminal appeal under Section 378 of the Code of Criminal Procedure 1973, the appellant - State of Gujarat has challenged the judgment and order dated September 20, 2004 of the learned Additional Sessions Judge (5th Fast Track Court) Mehsana rendered in Sessions Case No.91 of 2004 whereby all the eight respondents herein (original accused) have been acquitted of the offences punishable under Sections 147, 148, 149, 323 and 302 of the Indian Penal Code and Section 135 of the Bombay Police Act.

3. Briefly stated, the case of the prosecution is that a complaint came to be registered on March 24, 1997 at Mehsana Taluka Police Station vide Crime Register No.95 of 1997 by the complainant Rameshbhai Bhikhabhai to the effect that the respondents herein

had gathered near the pond at village Panchot, near the road leading from Panchot to Hardesan village, in furtherance of their common object to injure the complainant and his witnesses and with that object they had formed an unlawful assembly. It is further stated that the accused persons, who were having lethal weapons and with an intention to injure Sadhu Laxmanbhai Shantibhai, caused grievous hurt by a cricket bat and stumps on him. The injured witness i.e. Sadhu Laxmanbhai Shantibhai ran to save his life and the complainant and deceased Bhikhabhai Shantilal intervened, upon which the accused persons got excited. It is stated that the accused No.1 and 2 gave blows with a cricket bat on the head of Bhikhabhai and the other accused gave blows with stumps to the deceased Bhikhabhai, who succumbed to the injuries sustained by him.

4. Upon the complaint being registered, the investigative machinery was set into motion. The panchanama of the scene of offence was prepared, an inquest was held on the dead body of the deceased, which was then sent for autopsy and statements of witnesses were recorded. At the end of the investigation, as sufficient incriminating evidence

was found against all the accused persons, they came to be charge-sheeted before the learned Chief Judicial Magistrate, Mehsana. As the offences under Sections 147, 148, 149, 323 and 302 of the Indian Penal Code are exclusively triable by the court of Sessions, the learned Magistrate committed the case to the Court of learned Sessions Judge, Mehsana, which came to be registered as Sessions Case No.91 of 2004. The learned Additional Sessions Judge, to whom the case was made over for trial, framed the charge against the accused on August 19,2004 (Exh.8). The same was read over and explained to the accused persons, who pleaded not guilty to the same and claimed to be tried. Accordingly, the accused were put to trial.

5. In support of the case of the prosecution as many as nine witnesses were examined. After the recording of evidence of the prosecution witnesses was completed, the learned trial Judge explained to the accused persons the statements appearing against them in the evidence and recorded their statements under Section 313 of the Code of Criminal Procedure 1973. The defence of the accused persons was of denial.

6. At the end of the trial, on appreciation and evaluation of the evidence on record, the learned trial Judge came to the conclusion that the prosecution has not been able to prove beyond reasonable doubt that the accused persons were guilty of the offences with which they were charged. Accordingly, the learned trial Judge acquitted the accused persons vide judgment and order dated September 20, 2004, which has given rise to the present appeal.

7. We have heard Mr.K.C.Shah, learned Additional Public Prosecutor for the appellant and Mr.Y.M.Thakore for Mr.P.K.Jani, learned counsel for the respondents No.2 to 8 at length and have minutely perused the record and proceedings of the case, which have been summoned from the trial court. Mr.K.C.Shah, learned Additional Public Prosecutor has submitted that the learned trial Judge had not properly appreciated the evidence on record, especially that of P.W.1 Dr.Bhagvandas Dahyabhai Modi, who has been examined at Exh.22. According to him, the injuries on the person of the deceased have been found sufficient in the ordinary course of nature to cause death and

further, P.W.3 Laxmanbhai Shantidas has also been injured. It is submitted that according to the medical evidence, the injuries on the persons of the deceased as well as of the injured witnesses could have been caused by a cricket bat and stumps. According to Mr.K.C.Shah, the medical evidence corroborates the narration in the complaint and in this view of the matter, the order of acquittal passed by the learned trial Judge is contrary to the evidence on record. He has, therefore, prayed that the appeal be allowed.

8. On the other hand, Mr.Y.M.Thakore, learned counsel on behalf of Mr.P.K.Jani for the respondents No.2 to 8 has vehemently urged that there is no evidence on record to connect the respondents with the offences with which they have been charged. He has submitted that the trial court has rightly appreciated the evidence on record and the reasons recorded for acquittal are reasonable and cogent. Moreover, he has submitted that this being an appeal against an order of acquittal, the view favourable to the respondents should be adopted and since proper and plausible reasons for acquittal have been recorded, the judgment and order of the trial court

does not warrant any interference. It is, therefore, prayed that the appeal be dismissed.

9. In the above background, having heard and considered the rival submissions, it is necessary to evaluate and re-appreciate the evidence recorded by the trial court and the reasons assigned for acquittal of the respondents, by briefly summarising the salient features of the oral evidence of the prosecution case. P.W.1, Dr.Bhagvandas Dahyabhai Modi, has been examined at Exh.22. He has performed the post mortem on the body of deceased Bhikhabhai Shantilal on March 24, 1997. The post mortem report is at Exh.23. According to the post mortem report, the deceased died of “shock due to head injury”. From the testimony of this witness and the post mortem report it is evident that the deceased suffered as many as seven injuries. According to his deposition the injuries No.1 and 2 could have possibly been inflicted by a cricket bat and injuries No.3,4 and 5 could have been inflicted with stumps. This witness goes on to state that injuries No.1 to 4 are sufficient in the ordinary course of nature to cause death of a person.

10. P.W.1 has also examined the injured witness Laxmanbhai Shantidas, who was brought to him on March 24, 1997 at about 2.0 P.M. with four injuries on his person, which could have been caused by a hard and blunt substance, such as cricket bat and stumps. The certificate regarding the injuries to Laxmanbhai Shantidas is at Exh.24. According to the Doctor, the injuries on the person of Laxmanbhai were simple in nature and could have been healed within ten to fifteen days. It is evident from the deposition of P.W.1 as well as the medical certificate of injury at Exh.24 that the history given by the injured witness is that he sustained injuries with a stick.

11. The complainant, Rameshbhai Bhikhabhai has been examined as P.W.2 at Exh.26. According to his testimony at about 12.0 noon on the day of the incident, which occurred on the festival of “Dhuleti”, his father i.e. deceased Bhikhabhai Shantilal was present in the house when the son of his uncle came and informed them that some boys belonging to the Patel community were beating Laxmanbhai. Thereupon, the deceased left the house to go to the spot and the complainant followed. This witness states that when he reached the spot he found

his father lying on the ground, bleeding profusely from the head upon which, he raised an alarm and other relatives and villagers came there. It is further stated by this witness that the deceased was taken in a rickshaw to Civil Hospital, Mehsana where he was declared dead. Thereafter, the complaint was got registered in the police station. In his examination-in-chief P.W.Rameshbhai Bhikhabhai specifically states that the respondents have not inflicted injuries with a cricket bat and stumps on the head of the deceased resulting in his death, in his presence. This witness has been declared hostile to the case of the prosecution by the learned Additional Public Prosecutor. He has denied the statements made in the complaint and has admitted that there has been some sort of compromise with the respondents. In his cross-examination he has stated that when he reached the spot thirty to forty persons were present there and his father (deceased Bhikhabhai) was lying on the ground, but he did not see the respondents in the group.

12. The injured witness is P.W.3, Laxmanbhai Shantidas, who has been examined at Exh.28. According to his testimony the incident took place on the day

of “Dhuleti” and the deceased was his brother. He states that when he was going towards the outskirts of the village some boys of the Patel community, who had been to play cricket and had lost the game, came towards him. According to this witness, on seeing this, his nephew Lala ran home and informed the deceased. This witness states that in the incident that followed he sustained injuries. This witness states that he does not know who had inflicted injuries on the deceased Bhikhabhai, since a large number of persons had gathered there. According to this witness, he came to know later on that Bhikhabhai had sustained injuries and on going to the Hospital learnt that he had died. P.W.3 states that he had gone to Mehsana Civil Hospital in order to get treatment for the injuries sustained by him. This witness categorically states that he had no knowledge about who has inflicted the injuries upon him. In his examination-in-chief he has denied that the respondents have inflicted injuries upon deceased Bhikhabhai with cricket bat and stumps. This witness has also been declared hostile to the case of the prosecution by the learned Additional Public Prosecutor. This witness has maintained that he has not seen the respondents in the group of persons who

had gathered at the spot when the incident took place.

13. P.W.4 is Laljibhai alias Lalit Manilal Sadhu and his deposition is at Exh.29. He has totally denied that he went to the house of the deceased to inform him that the respondents were beating P.W. Laxmanbhai. He has categorically stated that he has no knowledge of who has inflicted blows upon Bhikhabhai. He has also stated that he does not know who has inflicted blows upon him. However, this witness has admitted that the deceased died due to injuries sustained by him and that P.W.2 Rameshbhai Bhikhabhai had given the complaint to the police. In his examination-in-chief, this witness has categorically denied that he had gone to inform the deceased that the respondents were beating P.W. Laxmanbhai. He has also stated that he does not know who has beaten the deceased. This witness has also been declared hostile to the case of the prosecution. From his cross-examination it is evident that an understanding has been arrived at with the respondents.

14. The mother of the complainant and wife of the

deceased, P.W.5 Manjulaben Bhikhabhai has been examined at Exh.30. She has stated that her nephew Lala had come running to their house and informed them that some persons are beating Laxman and thereupon the deceased went towards the village. However, this witness states that her husband, deceased Bhikhabhai, was lying in an injured condition on the road and a large number of people had gathered there but, she does not know who had injured him. In her examination-in-chief this witness had denied that the respondents inflicted injuries with a cricket bat and stumps upon her husband, which resulted in his death. This witness has also been declared as hostile to the case of the prosecution.

15. The testimony of P.W.6 Manubhai Bansilal Sadhu, at Exh.31, who is brother-in-law of the deceased is also not helpful to the case of the prosecution. Apart from stating that Bhikhabhai was lying in an injured condition when he reached the spot and that he was taken to the Civil Hospital in a rickshaw where he was declared dead, this witness does not state anything of significance. In his examination-in-chief he has specifically denied that the respondents have inflicted injuries upon the deceased

with a cricket bat and stumps.

16. Exh.33 is the Panchanama of the recovery of the cricket bat and stumps. P.W.7 Bakabhai Jenabhai and P.W.8 Dilipkumar Shankardas Sadhu have been examined at Exh.32 and Exh.34 respectively. They have stated that they were called to the Police Station where they were made to sign on a paper and that they do not know anything apart from this. Thus, the panch witnesses have not supported the narration in the panchanama at all and have also been declared hostile to the case of the prosecution.

17. This, in essence, is the sum total of the evidence on which the case of the prosecution rests. As is evident from the discussion of the testimony of the prosecution witnesses, as above, the complainant himself, who is the son of the deceased has totally denied the prosecution case and the statements made in the complaint. Not only that, the injured witness P.W.3 Laxmanbhai Shantidas has also feigned ignorance about who has inflicted injuries upon him. Even though the medical evidence i.e. the testimony of P.W.1 Dr. Bhagwandas Dahyabhai Modi, the post mortem report at Exh.23 and the certificate of injury of the

injured witness at Exh.24 go to show that head injuries were inflicted upon the deceased due to which he died, and P.W. Laxmanbhai had also sustained injuries with a hard and blunt substance, this evidence by itself does not implicate or connect the respondents in the commission of the offence. All the prosecution witnesses, who are also relatives of the complainant and the deceased, have not supported the case of the prosecution and have turned hostile. In fact, they seem to have been won over by the accused, as is evident from the evidence on record. Apart from speaking volumes about their conduct, their depositions are of no help to the case of the prosecution. In such a situation, there is not a shred of evidence on record to prove that the injuries which resulted in the death of Bhikhabhai and the injuries on the person of P.W. Laxmanbhai have been inflicted by the respondents alone and by none else. In fact, the testimonies of the prosecution witnesses, including the injured witness himself, are to the contrary. These witnesses have gone to the extent of denying that they saw the respondents at the spot.

18. It has to be kept in mind that the present is an

appeal against an order of acquittal and if two views are possible, the one favourable to the accused should be adopted. In the present appeal the prosecution witnesses have themselves turned hostile and have not supported the case of the prosecution. The medical evidence, by itself, does not connect the respondents with the commission of the offence. Therefore, we are of the opinion that the view taken by the learned trial judge is based on a correct appreciation of the evidence on record.

19. We have carefully scrutinised the evidence on record and the reasons assigned by the learned trial Judge for recording a finding of acquittal. As discussed above, there is not an iota of evidence on record to connect the respondents with the offences purported to have been committed by them. On re-appreciation of the evidence on record, we are of the considered view that the trial court has rightly recorded a finding of acquittal. The reasons assigned by the trial court for acquitting the respondents are cogent and plausible and there is no infirmity in the judgment and order impugned before us.

20. As a result of the above discussion, we do not

find any valid ground or justifiable reason to interfere with the judgment and order of trial curt.

21. For the foregoing reasons, the appeal fails and is dismissed.

(J.R.Vora,J)

(Smt.Abhilasha Kumari,J)

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